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**DEPARTMENT OF LABOR**

**Employee Benefits Security Administration**

**Technical Corrections to Exemptions from Certain  
Prohibited Transaction Restrictions**

**AGENCY:** Employee Benefits Security Administration,  
Labor.

**ACTION:** Notice of Technical Corrections.

**SUMMARY:** On December 29, 2017 the Department of Labor (the Department) published notices of exemptions in the Federal Register granting relief from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes technical corrections to those published prohibited transaction exemptions (PTEs): **PTE 2017-03, JPMorgan Chase & Co., D-11906; PTE 2017-04, Deutsche Investment Management Americas Inc. (DIMA) and Certain Current and Future Asset Management Affiliates of Deutsche Bank AG, D-11908; PTE 2017-05, Citigroup Inc., D-11909; PTE 2017-06, Barclays Capital Inc., D-11910; PTE 2017-07, UBS Assets Management (Americas) Inc.; UBS Realty Investors LLC; UBS Hedge Fund Solutions LLC; UBS**

O'Connor LLC; and Certain Future Affiliates in UBS's  
Asset Management and Wealth Management Americas  
Divisions, D-11907.  
JPMorgan Chase Co. (JPMC or the Applicant)  
Located in New York, New York  
[Prohibited Transaction Exemption (PTE) 2017-03;  
Exemption Application No. D-11906]

#### DISCUSSION

On December 29, 2017, the Department published PTE 2017-03 in the Federal Register at 82 FR 61816. PTE 2017-03 is an administrative exemption from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (the Act), and the Internal Revenue Code of 1986, that permits certain entities with specified relationships to JPMC to continue to rely upon the relief provided by PTE 84-14<sup>1</sup> for a period of five years, notwithstanding JPMC's criminal conviction (the Conviction). The Department granted PTE

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<sup>1</sup> 49 FR 9494, March 13, 1984, as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84-14 or the QPAM Exemption.

2017-03 to ensure that Covered Plans<sup>2</sup> whose assets are managed by a JPMC Affiliated QPAM or a JPMC Related QPAM may continue to benefit from the relief provided by PTE 84-14. The exemption is effective from January 10, 2018 through January 9, 2023.

The Department has decided to make certain technical and clarifying corrections to the exemption, as described below.

#### TECHNICAL CORRECTIONS

##### **Sections I(g) and I(m)**

The Department's response to Comment 36 on page 61833 of the exemption states: "Section I(g) requires two specific entities, JPMC and the Investment Bank of JPMorgan Chase Bank, to refrain from providing investment

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<sup>2</sup> A "Covered Plan" is a plan subject to Part 4 of Title 1 of ERISA ("ERISA-covered plan") or a plan subject to Section 4975 of the Code ("IRA"), with respect to which a JPMC Affiliated QPAM relies on PTE 84-14, or with respect to which a JPMC Affiliated QPAM (or any JPMC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the JPMC Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into its contract, arrangement, or agreement with the ERISA covered plan or IRA.

management services to plans.... Thus, with respect to Sections I(g) and (m), the obligations imposed extend exclusively to JPMC and the Investment Bank of JPMorgan Chase Bank.... The Department also believes that the potential for disqualification of all JPMC Affiliated QPAMs under this agreement will serve as additional incentive for JPMC and JPMorgan Chase Bank to comply in good-faith with the provisions of Sections I(g) and (m)."

The Department is revising its response to Comment 36 by removing references to "the Investment Bank of JPMorgan Chase Bank" because Section I(g) and I(m) do not apply to such entity. Similarly, the Department is also removing the phrase "JPMorgan Chase Bank" from the sentence that reads, "[t]he Department also believes that the potential for disqualification of all JPMC Affiliated QPAMs under this agreement will serve as additional incentive for JPMC and JPMorgan Chase Bank to comply in good-faith with the provisions of Sections I(g) and (m)."

**Section I(h) (1) (vii)**

The Department is adding the term "as reasonably possible" to the first sentence of the first full

paragraph on page 61821 of the preamble to the exemption.

As revised, the first sentence of the first full paragraph on page 61821 now reads: "The Department has revised the term 'corrected promptly' to be consistent with the Department's intent that violations or compliance failures be corrected 'as soon as reasonably possible upon discovery or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier).'

**Section I(i) (10)**

Section I(i) (10) of the exemption states: "(10) Each JPMC Affiliated QPAM and the auditor must submit to [the Office of Exemption Determinations] OED: Any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, no later than two (2) months after the execution of any such engagement agreement."

The Department is revising Section I(i) (10) of the exemption to clarify the timing requirements for submission of the auditor agreements. As revised, Section I(i) (10) of the exemption now states: "(10) Any

engagement agreement with an auditor to perform the audits required under the terms of this exemption must be submitted to OED by March 9, 2018 if the agreement was executed on or prior to January 10, 2018. Any engagement agreement(s) entered into subsequent to January 10, 2018 must be submitted to OED no later than two (2) months after the execution of such engagement agreement.

**Section I(j)(7)**

Section I(j)(7) of the exemption states: "(7) By July 9, 2018, each JPMC Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For all other prospective Covered Plans, the JPMC Affiliated QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and such clients or other written contractual agreement."

The Department notes that the term "prospective Covered Plan," as used in Section I(j)(7), means a Covered Plan that enters into a written asset or investment management agreement with a JPMC Affiliated

QPAM on or after July 10, 2018.

**Section I(k)**

Section I(k) of the exemption states: "(k) By March 10, 2018, each JPMC Affiliated QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a JPMC Affiliated QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. Any prospective client for which a JPMC Affiliated QPAM relies on PTE 84-14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption must receive the proposed and final exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the JPMC Affiliated QPAM. Disclosures may be

delivered electronically.”

The Department is replacing the term “prospective client” with “prospective Covered Plan.” As revised, “prospective Covered Plan,” as used in Section I(k), means a Covered Plan that enters into a written asset or investment management agreement with a JPMC Affiliated QPAM on or after March 10, 2018.

The Department is clarifying that the requirements of Section I(k) will be met with respect to all current and prospective Covered Plans if, by March 10, 2018, the Applicant posts the required Section I(k) disclosure documents on a website whose link/address is referenced in: (a) the notice sent by the Applicant following the grant of the temporary exemption; or (b) the relevant investment management agreement received by the client (including instances where such reference describes the site as containing the required obligations under the temporary exemption), and the Applicant informs clients who are Covered Plan clients as of the effective date of this exemption, in writing, by March 10, that they can go back to the website to find the additional documents, which are identified.



The Department is also clarifying that, for Covered Plans that enter into a written asset or investment management agreement with the Applicant between January 11, 2018, and March 9, 2018, the written notice that the website has been updated must be provided to such Covered Plans by March 31, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department, telephone (202) 693-8456. (This is not a toll-free number).

**Deutsche Investment Management Americas Inc. (DIMA) and  
Certain Current and Future Asset Management Affiliates of  
Deutsche Bank AG (collectively, the Applicant or the DB  
QPAMs) ,**

**Located in New York, New York**

**[Prohibited Transaction Exemption (PTE) 2017-04;**

**Exemption Application No. D-11908]**

## DISCUSSION

On December 29, 2017, the Department published PTE 2017-04 in the Federal Register at 82 FR 61840. PTE 2017-04 is an administrative exemption from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (the Act), and the Internal Revenue Code of 1986, that permits certain entities with specified relationships to Deutsche Securities Korea, Co. (DSK)<sup>3</sup> or DB Group Services (UK) Limited (DB Group Services)<sup>4</sup> to continue to rely upon the relief provided by PTE 84-14 for a period of three years,<sup>5</sup> notwithstanding certain criminal convictions (the Convictions). The Department granted PTE 2017-04 to

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<sup>3</sup> Deutsche Securities Korea, Co. is a South Korean "affiliate" (as defined in Section VI(d) of PTE 84-14) of Deutsche Bank AG.

<sup>4</sup> DB Group Services (UK) Limited is United Kingdom-based "affiliate" (as defined in Section VI(d) of PTE 84-14) of Deutsche Bank AG.

<sup>5</sup> 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84-14 or the QPAM exemption.

ensure that Covered Plans<sup>6</sup> with assets managed by an asset manager within the corporate family of Deutsche Bank AG (together with its current and future affiliates, Deutsche Bank) may continue to benefit from the relief provided by PTE 84-14. The exemption is effective from April 18, 2018 through April 17, 2021 (the Exemption Period). The Department has decided to make certain technical and clarifying corrections to the exemption, as described below.

#### TECHNICAL CORRECTIONS

##### **Section I Prefatory Language**

The prefatory language of Section I of the exemption states, in relevant part: "Certain entities with

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<sup>6</sup> A "Covered Plan" is a plan subject to Part 4 of Title 1 of ERISA ("ERISA-covered plan") or a plan subject to section 4975 of the Code ("IRA") with respect to which a DB QPAM relies on PTE 84-14, or with respect to which a DB QPAM (or any Deutsche Bank affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the DB QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA.

specified relationships to Deutsche Bank AG ... will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 ... notwithstanding: .... (2) the 'US Conviction' against DB Group Services (UK) Limited, an affiliate of Deutsche Bank based in the United Kingdom (hereinafter, DB Group Services, as further defined in Section II(e)) ...."

For consistency with the re-ordered Definitions in Section II of the exemption, the relevant prefatory language of Section I now reads, "DB Group Services (UK) Limited, an affiliate of Deutsche Bank based in the United Kingdom (hereinafter, DB Group Services, as further defined in Section II(c))."

#### **Section I(h) (1) (v)**

Section I(h) (1) (v) in the exemption states, in relevant part: "The Policies must require, and must be reasonably designed to ensure that: .... (v) To the best of the DB QPAM's knowledge at the time, the DB QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs with respect

to Covered Plans.”

For clarity, the Department has deleted the phrase “with respect to ERISA-covered plans or IRAs.” As revised, Section I(h)(1)(v) now reads, in relevant part: “The Policies must require, and must be reasonably designed to ensure that: . . . . (v) To the best of the DB QPAM’s knowledge at the time, the DB QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans.”

#### **Section I(h)(2)**

Section I(h)(2) of the exemption states: “Each DB QPAM must develop and implement a program of training (the Training), to be conducted at least annually ... The first Training under this Final Exemption must be completed by all relevant DB QPAM personnel by April 18, 2019 (by the end of this 30-month period, asset/portfolio management, trading, legal, compliance, and internal audit personnel who were employed from the start to the end of the period must have been trained twice: the first time under PTE 2016-13; and the second time under

this exemption)."

The Department is revising this condition to reflect the Department's intended timeline for completing the first Training under this exemption. To this end, the Department is replacing "April 18, 2019" with "April 17, 2019." Furthermore, the Department is replacing the phrase "by the end of this 30-month period" with "by the end of the 24-month period commencing on the effective date of PTE 2016-13 and ending on April 17, 2019." As revised, Section I(h)(2) in relevant part now reads: "The first Training under this Final Exemption must be completed by all relevant DB QPAM personnel by April 17, 2019 (by the end of the 24-month period commencing on the effective date of PTE 2016-13 and ending on April 17, 2019, asset/portfolio management, trading, legal, compliance, and internal audit personnel who were employed from the start to the end of the period must have been trained twice: the first time under PTE 2016-13; and the second time under this exemption)."

**Section I(h)(2)(i)**

Section I(h)(2)(i) of the exemption states: "The

Training must: (i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing."

The Department is revising Section I(h)(2)(i) to clarify that this exemption's Training requirement must be included in the Policies. As revised, Section I(h)(2)(i) reads, in relevant part: "The Training must: (i) Be required by the Policies and, at a minimum...."

**Section I(i)(5)(i)**

Section I(i)(5)(i) of the exemption states: "For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) ... The Audit Report must include the auditor's specific determinations regarding: (i) the adequacy of each DB QPAM's Policies and Training ... The DB QPAM must promptly address or prepare a written plan of action to

address any determination of inadequacy by the auditor regarding the adequacy of the Policies and Training...."

For clarity, the Department is replacing the phrase "any determination of inadequacy by the auditor regarding the adequacy of the Policies and Training" with "any determination by the auditor regarding the adequacy of the Policies and Training." As revised, Section I(i)(5)(i) in relevant part now states: "The DB QPAM must promptly address or prepare a written plan of action to address any determination by the auditor regarding the adequacy of the Policies and Training...."

**Section I(i)(7)**

Section I(i)(7) of the exemption states: "(7) With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the line of business engaged in discretionary asset management services through the DB QPAM with respect to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that such DB QPAM has



addressed, corrected, or remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report...."

The Department is replacing the term "General Counsel" with "general counsel" and making clear that the certification of the Audit Report can come from the respective line of business's general counsel or one of its three most senior officers. As revised, Section I(i)(7) in relevant part now reads: "With respect to each Audit Report, the general counsel, or one of the three most senior executive officers of the line of business engaged in discretionary asset management services through the DB QPAM with respect to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption."

**Section I(i)(8)**

Section I(i)(8) of the exemption states: "(8) The Audit Committee of Deutsche Bank's Supervisory Board is provided a copy of each Audit Report; and a senior

executive officer with a direct reporting line to the highest ranking legal compliance officer of Deutsche Bank must review the Audit Report for each DB QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report. Deutsche Bank must provide notice to the Department in the event of a switch in the committee to which the Audit Report will be provided."

The Department is revising the first sentence of Section I(i)(8) by removing the term "legal." The condition now reads: "(8) The Audit Committee of Deutsche Bank's Supervisory Board is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking compliance officer of Deutsche Bank must review the Audit Report for each DB QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report."

**Section I(i)(9)**

Section I(i)(9) of the proposed exemption states: "(9) Each DB QPAM provides its certified Audit Report, by regular mail to: The Department's Office of Exemption

Determinations (OED), 200 Constitution Avenue NW., Suite 400, Washington, DC 20210, or by private carrier to: 122 C Street NW., Suite 400, Washington, DC 20001-2109, no later than 45 days following its completion." Section I(i)(9) of the final exemption states: "(9) Each DB QPAM provides its certified Audit Report, by regular mail....This delivery must take place no later than thirty (30) days following completion of the Audit Report...."

The Department is revising Section I(i)(9) for consistency with the proposed exemption by replacing "thirty (30) days" with "forty-five (45) days." Section I(i)(9) in relevant part now states: "This delivery must take place no later than forty-five (45) days following completion of the Audit Report."

**Section I(i)(10)**

Section I(i)(10) of the exemption states: "(10) Each DB QPAM and the auditor must submit to OED any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, no later than two (2) months after the execution of any such engagement

agreement.”

The Department is revising Section I(i)(10) to reflect that any engagement agreement entered into with the auditor prior to or on April 18, 2018 in order to comply with this exemption must be submitted by June 17, 2018. Section I(i)(10), as revised, now reads: “(10) Any engagement agreement to perform the audits required under the terms of this exemption must be submitted to OED by June 17, 2018 if the agreement was executed on or prior to April 18, 2018. Any engagement agreement(s) entered into subsequent to April 18, 2018 must be submitted to OED no later than two (2) months after the execution of such engagement agreement.”

**Section I(j)(7)**

Section I(j)(7) of the exemption in relevant part states: “(7) By October 17, 2018, each DB QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For all other prospective Covered Plans, the DB QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the DB QPAM and such clients

or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016-13 that meets the terms of this condition."

The Department notes that the term "prospective Covered Plan," as used in Section I(j)(7), means a Covered Plan that enters into a written asset or investment management agreement with a DB QPAM on or after October 17, 2018.

The Department also notes that the phrase, "This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016-13 that meets the terms of this condition," means that a notice that satisfies Section I(j) of PTE 2016-13 will satisfy Section I(j)(7) of this exemption, unless such notice contains any language that limits, or is inconsistent with, the scope of this exemption.

#### **Section I(k)**

Section I(k) of the exemption states: "(k) By June 17, 2018, each DB QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Convictions (the Summary), which have been submitted to the Department, and a prominently

displayed statement (the Statement) that the Convictions result in a failure to meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a DB QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. Any prospective client for which a DB QPAM relies on PTE 84-14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption must receive the proposed and final exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the DB QPAM. Disclosures may be delivered electronically."

The Department is revising Section I(k) by adding the phrase "that entered into a written asset or investment management agreement with a DB QPAM on or before June 16, 2018" following the phrase "to each sponsor and beneficial owner of a Covered Plan." As revised, Section I(k) now states, in relevant part: "By June 17, 2018, each DB QPAM will provide a notice of the exemption, along with a separate summary describing the

facts that led to the Convictions (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that each Conviction separately results in a failure to meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered Plan that entered into a written asset or investment management agreement with a DB QPAM on or before June 16, 2018, or the sponsor of an investment fund in any case where a DB QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests."

The Department notes that the phrase, "Any prospective client for which a DB QPAM relies on PTE 84-14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption..." means any Covered Plan that enters into a written asset or investment management agreement with a DB QPAM on or after June 17, 2018.

**Section I(m)(1)**

Section I(m)(1) of the exemption states: "(1) By

October 17, 2018, Deutsche Bank designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein.”

The Department notes that each relevant line of business may designate its own Compliance Officer in order to comply with this condition.

**Section I(m)(1)(i)**

Section I(m)(1)(i) of the exemption states: “(i) The Compliance Officer must be a legal professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code.”

The Department is removing the word “legal” from Section I(m)(1)(i). As revised, Section I(m)(1)(i) now reads: “(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code.”

**Section I(m)(1)(ii)**



Section I(m)(1)(ii) of the exemption states: "(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance for asset management."

The Department is removing the word "legal" from Section I(m)(1)(ii). As revised, Section I(m)(1)(ii) now reads: "(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of compliance for asset management."

#### **Section II(a)**

Section II(a) of the exemption states: "The term 'Convictions' means (1) the judgment of conviction against DB Group Services, in case number 3:15-cr-00062-RNC to be entered in the United States District Court for the District of Connecticut to a single count of wire fraud, in violation of 18 U.S.C. §1343..." This Section is revised to read: "The term 'Convictions' means (1) the judgment of conviction against DB Group Services that was entered on April 18, 2017, in case number 3:15-cr-00062-RNC in the United States District Court for the District of Connecticut to a single count of wire fraud,

in violation of 18 U.S.C. §1343..."

**Discussion of Written Comments**

The prefatory section to the discussion of written comments on page 61840 of the Federal Register states: "[t]he Department received written comments from the Applicant, members of the U.S. Congress, and a number of plan and IRA clients of Deutsche Bank." This section is revised to read, in relevant part, "[t]he Department received written comments from the Applicant, members of the U.S. Congress, and several other commenters."

FOR FURTHER INFORMATION CONTACT: Mr. Scott Ness of the Department, telephone (202) 693-8561. (This is not a toll-free number).

**Citigroup Inc. (Citigroup or the Applicant)**

**Located in New York, New York**

**[Prohibited Transaction Exemption (PTE) 2017-05;**

**Exemption Application No. D-11909]**

DISCUSSION

On December 29, 2017, the Department published PTE

2017-05 in the Federal Register at 82 FR 61864. PTE 2017-05 is an administrative exemption from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (the Act), and the Internal Revenue Code of 1986, that permits certain entities with specified relationships to Citigroup to continue to rely upon the relief provided by PTE 84-14<sup>7</sup> for a period of five years,<sup>8</sup> notwithstanding Citicorp's criminal conviction (the Conviction). The Department granted PTE 2017-05 to ensure that Covered Plans<sup>9</sup> whose

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<sup>7</sup> 49 FR 9494, March 13, 1984, as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84-14 or the QPAM Exemption.

<sup>8</sup> PTE 2017-05 is effective from January 10, 2018 through January 9, 2023.

<sup>9</sup> A "Covered Plan" is a plan subject to Part 4 of Title 1 of ERISA ("ERISA-covered plan") or a plan subject to Section 4975 of the Code ("IRA"), with respect to which a Citigroup Affiliated QPAM relies on PTE 84-14, or with respect to which a Citigroup Affiliated QPAM (or any Citigroup affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the Citigroup

assets are managed by a Citigroup Affiliated QPAM or Citigroup Related QPAM may continue to benefit from the relief provided by PTE 84-14.

The Department has decided to make certain technical and clarifying corrections to the exemption, as described below.

#### TECHNICAL CORRECTIONS

##### **Preamble**

The Department is replacing the term "Citicorp" with "Citicorp" on page 61876 of the preamble to the exemption.

##### **Section I(i) (1)**

The Department is revising its discussion of the entities subject to the Section I(i) Audit requirement. On page 61869 of the exemption, the Department is replacing the sentence that reads: "The Department notes

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Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into its contract, arrangement, or agreement with the ERISA covered plan or IRA.

that Section I(i) requires the audit of each Citigroup entity that relies upon QPAM status, or expressly represents to ERISA-covered plan or IRA clients that it qualifies as a QPAM," with the following: "The Department notes that Section I(i) requires the audit of each Citigroup Affiliated QPAM."

**Section I(i) (10)**

Section I(i)(10) of the exemption states: "(10) Each Citigroup Affiliated QPAM and the auditor must submit to [the Office of Exemption Determinations] OED: Any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, no later than two (2) months after the execution of any such engagement agreement."

The Department is revising Section I(i)(10) of the exemption to clarify the timing requirements for submission of the auditor agreements. As revised, Section I(i)(10) of the exemption now states: "(10) Any engagement agreement with an auditor to perform the audits required under the terms of this exemption must be

submitted to OED by March 9, 2018 if the agreement was executed on or prior to January 10, 2018. Any engagement agreement(s) entered into subsequent to January 10, 2018 must be submitted to OED no later than two (2) months after the execution of such engagement agreement."

**Section I(j)(7)**

Section I(j)(7) of the exemption states: "(7) By July 9, 2018, each Citigroup Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For all other prospective Covered Plans, the Citigroup Affiliated QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the Citigroup Affiliated QPAM and such clients or other written contractual agreement."

The Department notes that the term "prospective Covered Plan," as used in Section I(j)(7), means a Covered Plan that enters into a written asset or investment management agreement with a Citigroup Affiliated QPAM on or after July 10, 2018.

**Section I(k)**

Section I(k) of the exemption states: "(k) By March 10, 2018, each Citigroup Affiliated QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a Citigroup Affiliated QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. Any prospective clients for which a Citigroup Affiliated QPAM relies on PTE 84-14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption must receive the proposed and final exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset or investment management agreement from the Citigroup

Affiliated QPAM. Disclosures may be delivered electronically."

The Department notes that "prospective clients," as referred to in Section I(k), means Covered Plans that enter into a written asset or investment management agreement with a Citigroup Affiliated QPAM on or after March 10, 2018. The Department also notes that the disclosure materials required to be provided to prospective clients under Section I(k) do not need to be provided to such clients prior to March 10, 2018. Such disclosures, rather, must be made, "prior to, or contemporaneously with, the client's receipt of a written asset or investment management agreement from the Citigroup Affiliated QPAM." Finally, the Department notes that the disclosure materials required to be provided to prospective clients under the second sentence of Section I(k) are the same materials referenced in the first sentence of Section I(k).

#### **Section I(p)**

The discussion of the Right to Copies of Policies



and Procedures on page 61876 of the exemption states:

"The Department has also modified Section I(p) to require that the Citigroup Affiliated QPAMs provide notice regarding the information on the web site within 60 days of the effective date of this exemption, and thereafter to the extent certain material changes are made to the Policies."

The Department is revising the discussion of the Right to Copies of Policies and Procedures to conform with the language of Section I(p). As revised, the discussion on page 61876 now states: "The Department has also modified Section I(p) to require that the Citigroup Affiliated QPAMs provide notice regarding the information on the website by July 9, 2018. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed."

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department, telephone (202) 693-8456. (This is not a toll-free number).

**Barclays Capital Inc. (BCI or the Applicant),**  
**Located in New York, New York**  
**[Prohibited Transaction Exemption (PTE) 2017-06;**  
**Exemption Application No. D-11910]**

#### DISCUSSION

On December 29, 2017, the Department published PTE 2017-06 in the Federal Register at 82 FR 61881. PTE 2017-06 is an administrative exemption from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (the Act), and the Internal Revenue Code of 1986, that permits certain entities with specified relationships to Barclays PLC (BPLC) to continue to rely upon the relief provided by PTE 84-14 for a period of five years,<sup>10</sup> notwithstanding certain criminal convictions (the Convictions). The Department granted PTE 2017-06 to ensure that Covered

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<sup>10</sup> 49 FR 9494, March 13, 1984, as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84-14.

Plans<sup>11</sup> with assets managed by an asset manager within the corporate family of BPLC may continue to benefit from the relief provided by PTE 84-14. The effective date of PTE 2017-06 is January 10, 2018, and the exemption is effective from January 10, 2018, through January 9, 2023 (the Exemption Period).

The Department has decided to make certain technical and clarifying corrections to the exemption, as described below.

#### TECHNICAL CORRECTIONS

##### **Section I(b)**

Section I(b) of the exemption states: "Apart from a non-fiduciary line of business within BCI, the Barclays

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<sup>11</sup> A "Covered Plan" is a plan subject to Part 4 of Title 1 of ERISA ("ERISA-covered plan") or a plan subject to section 4975 of the Code ("IRA") with respect to which a Barclays Affiliated QPAM relies on PTE 84-14, or with respect to which a Barclays Affiliated QPAM (or any BPLC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the Barclays Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA.

Affiliated QPAMs and the Barclays Related QPAMs (including their officers, directors, and agents other than BPLC, and employees of such Barclays Affiliated QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction."

This Section is revised by replacing "within BCI" with "of a BPLC subsidiary." In addition, the phrase, "who had responsibility for or exercised authority in connection with the management of plan assets" now appears after "Barclays Affiliated QPAMs" in the parenthetical. As revised, Section I(b) reads, in pertinent part, "Apart from a non-fiduciary line of business of a BPLC subsidiary, the Barclays Affiliated QPAMs and the Barclays Related QPAMs (including their officers, directors, and agents other than BPLC, and employees of such Barclays Affiliated QPAMs who had responsibility for or exercised authority in connection with the management of plan assets) did not receive direct compensation...."

**Section I(j)**

Section I(j) of the exemption states, in relevant part: "As of January 10, 2018 and throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a Barclays Affiliated QPAM and a Covered Plan, the Barclays Affiliated QPAM agrees and warrants...."

For clarity, the phrase, "As of January 10, 2018 and throughout the Exemption Period," is revised to read, "Effective on the date that a Barclays Affiliated QPAM enters into any arrangement, agreement, or contract, after January 10, 2018, with any Covered Plan, and throughout the Exemption Period,...."

**Section I(j)(7)**

Section I(j)(7) states: "Prior to a Barclays Affiliated QPAM's engagement with an ERISA-covered plan or IRA for the provision of asset management or other discretionary fiduciary services...." The Department is replacing the phrase, "an ERISA-covered plan or IRA" with "a Covered Plan."

**Section I(k)**

Section I(k) states: "Any client for which a Barclays Affiliated QPAM relies on PTE 84-14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption must receive the proposed and final exemptions, along with a separate summary describing the facts that led to the Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84-14, prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the Barclays Affiliated QPAM. Disclosures may be delivered electronically."

The Department is replacing the term "client" with "Covered Plan." As revised, "Covered Plan," as used in Section I(k), means a Covered Plan that enters into a written asset or investment management agreement with a Barclays Affiliated QPAM.

**Section I(m)(1)(iv)**

Section I(m)(1)(iv) states: "(iv) Each Annual Report must be provided to the appropriate corporate officers of BPLC and each Barclays Affiliated QPAM to which such report relates; the head of compliance and the General Counsel (or their functional equivalent) of the relevant Barclays Affiliated QPAM and the General Counsel (or their functional equivalent) of BPLC; and must be made unconditionally available to the independent auditor described in Section I(i) above."

Comment Section 37 of the exemption at 82 FR 61896 states that the Department intended to revise Section I(m)(1)(iv) by deleting the phrase, "the appropriate corporate officers of BPLC and each Barclays Affiliated QPAM to which such report relates" from the condition. Such revision did not appear in the text. Therefore, the Department is now revising Section I(m)(1)(iv) to read, "(iv) Each Annual Report must be provided to the head of compliance and the General Counsel (or their functional equivalent) of the relevant Barclays Affiliated QPAM and the General Counsel (or their functional equivalent) of

BPLC; and must be made unconditionally available to the independent auditor described in Section I(i) above."

### **Section II(d)12**

Section II(d) states, "The term "Conviction" means the judgment of conviction against BPLC for violation of the Sherman Antitrust Act, 15 U.S.C. §1, which is scheduled to be entered in the District Court for the District of Connecticut (the District Court), Case Number 3:15-cr-00077-SRU-1."

Section II(d) is revised to reflect that the Conviction occurred prior to the effective date of the exemption. Section II(d) now reads, in pertinent part, ".... 15 U.S.C. §1, which was entered in the District Court...."

### **Section II(e)13**

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**12** In the final grant notice, the Department renumbered Section II(d), which was previously Section II(e) in the proposed exemption.



Section II(e) states, "The term "Conviction Date" means the date of the judgment of the trial court. For avoidance of confusion, the Conviction Date is January 10, 2017, as set forth in Case Number 3:15-cr-00077-SRU."

Section II(e) is revised to add a "-1" after the letters "SRU" in the case number. As revised, Section II(e) now reads, in pertinent part, ".... as set forth in Case Number 3:15-cr-00077-SRU-1."

FOR FURTHER INFORMATION CONTACT: Ms. Anna Mpras Vaughan of the Department, telephone (202) 693-8565. (This is not a toll-free number).

**UBS Assets Management (Americas) Inc.; UBS Realty Investors LLC; UBS Hedge Fund Solutions LLC; UBS O'Connor LLC; and Certain Future Affiliates in UBS's Asset Management and Wealth Management Americas Divisions (collectively, the Applicants or the UBS QPAMs)**

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**13** In the final grant notice, the Department renumbered Section II(e), which was previously Section II(f) in the

**Located in Chicago, Illinois; Hartford, Connecticut; New York, New York; and Chicago, Illinois, Respectively [Prohibited Transaction Exemption (PTE) 2017-07; Exemption Application No. D-11907]**

#### DISCUSSION

On December 29, 2017, the Department published PTE 2017-07 in the Federal Register at 82 FR 61903. PTE 2017-07 is an administrative exemption from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (the Act), and the Internal Revenue Code of 1986, that permits certain entities with specified relationships to UBS (as defined in Section II(g)) (hereinafter, the UBS QPAMs) to continue to rely upon the relief provided by PTE 84-14 for a period of three years,<sup>14</sup> notwithstanding the "2013

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proposed exemption.

<sup>14</sup> 49 FR 9494, March 13, 1984, as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84-14 or the QPAM exemption.

Conviction” of UBS Securities Japan Co. Ltd<sup>15</sup> and the “2017 Conviction” of UBS (collectively, the Convictions as defined in Section II(a)). The Department granted PTE 2017-07 to ensure that Covered Plans<sup>16</sup> with assets managed by UBS QPAMs may continue to benefit from the relief provided by PTE 84-14. The exemption is effective from January 10, 2018 through January 9, 2021 (the Exemption Period). The Department has decided to make certain technical and clarifying corrections to the exemption, as described below.

#### TECHNICAL CORRECTIONS

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**15** UBS Securities Japan Co. Ltd is a wholly owned subsidiary of UBS incorporated under the laws of Japan.

**16** A “Covered Plan” is a plan subject to Part 4 of Title 1 of ERISA (“ERISA-covered plan”) or a plan subject to section 4975 of the Code (“IRA”) with respect to which a UBS QPAM relies on PTE 84-14, or with respect to which a UBS QPAM (or any UBS affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the UBS QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA.

**Section I(f)**

Section I(f) of the exemption states: "[a] UBS QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: further the FX Misconduct or the criminal conduct that is the subject of the Convictions; or cause the UBS QPAM, its affiliates or related parties to directly or indirectly profit from the FX Misconduct or the criminal conduct that is the subject of the Convictions." The Department is revising Section I(f) by inserting the word "or" between the phrase "or cause the UBS QPAM" and the phrase "its affiliates" and by removing the phrase "or related parties." As revised, Section I(f) now reads, "A UBS QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: further the FX Misconduct or the criminal conduct that is the subject of the Convictions; or cause the UBS QPAM or its affiliates to directly or

indirectly profit from the FX Misconduct or the criminal conduct that is the subject of the Convictions."

**Section I(h)(1)(ii)**

Section I(h)(1)(ii) of the exemption states: "[t]he UBS QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, in such case as applicable, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans." For clarity and consistency, the Department is replacing the word "such" with the word "each" and by inserting the phrase "with respect to each Covered Plan" after the phrase "as applicable." As revised, Section I(h)(1)(ii) now reads, "The UBS QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, in each case as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans."

**Section I(h)(2)(ii) and Section I(i)(10)**

Section I(h)(2)(ii) of the exemption states: "(2) Each UBS QPAM must develop and implement a program of training (the Training), conducted at least annually, for all relevant UBS QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel.

The Training must: .... (ii) [b]e conducted by an independent professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code." The Department is revising Section I(h)(2)(ii) to reflect that the required training may be conducted by appropriate UBS personnel who have been prudently selected. Therefore, the Department is removing the word "independent" from Section I(h)(2)(ii) and, as revised, Section I(h)(2)(ii) now reads: "Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code."

Section I(i)(10) of the exemption states: "[e]ach UBS QPAM and the auditor must submit to OED any engagement agreement(s) entered into pursuant to the

engagement of the auditor under this exemption. Further, each UBS QPAM must submit to OED any engagement entered into with any other person or entity retained in connection with such QPAM's compliance with the Training or Policies conditions of this exemption no later than two (2) months after the execution of any such engagement agreement." The Department is revising Section I(i)(10) to reflect that the UBS QPAMs need not submit to Office of Exemption Determinations (OED) an engagement agreement entered into to comply with the training or Policy conditions, and to reflect that any engagement agreement entered into with the auditor prior to or on January 10, 2018 in order to comply with this exemption must be submitted by March 9, 2018. Section I(i)(10), as revised, now reads: "Any engagement agreement with an auditor to perform the audits required under the terms of this exemption must be submitted to OED by March 9, 2018 if the agreement was executed on or prior to January 10, 2018. Any engagement agreement(s) entered into subsequent to January 10, 2018 must be submitted to OED no later than two (2) months after the execution of such

engagement agreement.”

**Section I(i)(1) and footnote 71**

Section I(i)(1) of the exemption states, in relevant part: “Each UBS QPAM submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each UBS QPAM’s compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The first annual audit must cover a fourteen-month period that begins on January 10, 2017 (the Initial Audit Period) and all subsequent audits must cover consecutive twelve month periods commencing upon the end of the Initial Audit Period. The Initial Audit Period shall cover the period of time during which PTE 2016-17 is effective and a portion of the time during which this exemption is effective and the audit terms contained in this Section I(i) will supersede the terms of Section I(i) of PTE 2016-17 except as otherwise provided in this



exemption. In determining compliance with the conditions for relief in PTE 2016-17 and this exemption, including the Policies and Training requirements, for purposes of conducting the audit, the auditor will rely on the conditions for exemptive relief as then applicable to the respective periods under audit" (footnotes omitted).

To correct the timing of the audit requirement, the Department is revising Section I(i)(1) of the exemption to reflect that the Initial Audit Period begins on January 10, 2018 and ends on March 9, 2019, and the corresponding Audit Report must be completed by September 9, 2019. Additionally, the Second audit period must cover the period March 10, 2019 through March 9, 2020 and must be completed by September 9, 2020 and the third audit must cover the period from March 10, 2020 through March 9, 2021. In connection with the revision, the Department is deleting from Section I(i) the following language and corresponding footnote 72 on page 61917 of the exemption: "The Initial Audit Period shall cover the period of time during which PTE 2016-17 is effective and a portion of the time during which this exemption is

effective and the audit terms contained in this Section I(i) will supersede the terms of Section I(i) of PTE 2016-17 except as otherwise provided in this exemption. In determining compliance with the conditions for relief in PTE 2016-17 and this exemption, including the Policies and Training requirements, for purposes of conducting the audit, the auditor will rely on the conditions for exemptive relief as then applicable to the respective periods under audit."

As revised, Section I(i)(1) in relevant part now states, "Each UBS QPAM submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each UBS QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The first annual audit must cover a fourteen-month period that begins on January 10, 2018 and ends on March 9, 2019 (the Initial Audit Period), and must be completed by September 9, 2019. The second audit must cover the

period from March 10, 2019 through March 9, 2020 and must be completed by September 9, 2020. In the event that the Exemption Period is extended or a new exemption is granted, the third audit would cover the period from March 10, 2020 through March 9, 2021 and would have to be completed by September 9, 2021 (unless the Department chooses to alter the annual audit requirement in the new or extended exemption)."

In coordination with the correction to Section I(i)(1) above, Footnote 71 on page 61917 included with Section I(i) is revised to state, "The third audit referenced above would not have to be completed until after the Exemption Period expires. If the Department ultimately decides to grant relief for an additional period, it could decide to alter the terms of the exemption, including the audit conditions (and the timing of the audit requirements). Nevertheless, the Applicant should anticipate that the Department will insist on strict compliance with the audit terms and schedule set forth above. As it considers any new exemption application, the Department may also contact the auditor

for any information relevant to its determination."

The Department's discussion in Comment V on page 61909 of the exemption should be read in a manner that is consistent with these revisions.

**Section I(i)(5)(ii)**

Section I(i)(5)(ii) of the exemption states: "(5) For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to UBS and the UBS QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the UBS QPAMs. The Audit Report must include the auditor's specific determinations regarding: .... (ii) The adequacy of the Annual Review described in Section I(m)."

For clarity, the Department is revising Section I(i)(5)(ii) of the exemption by adding the phrase "most recent" before the phrase "Annual Review". As revised, Section I(i)(5)(ii) now reads, in relevant part, "The

adequacy of the most recent Annual Review described in Section I(m)."

**Section I(i)(7)**

Section I(i)(7) of the exemption states: "[w]ith respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the UBS QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that, such UBS QPAM has addressed, corrected, remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination, that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code."

For consistence with the Department's intention, as expressed in the exemption's comment section on page

61911 regarding certification of the Audit Report, Section I(i)(7) is revised by adding the phrase "to the best of such officer's knowledge at the time" after the phrase "that the officer has reviewed the Audit Report and this exemption; that..." and after the phrase "Such certification must also include the signatory's determination that...." As revised, Section I(i)(7) now reads, "With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers of the UBS QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that, to the best of such officer's knowledge at the time, such UBS QPAM has addressed, corrected, remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination that, to the best of such officer's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to

ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code."

**Section I(i)(9)**

Section I(i)(9) of the proposed exemption states:

"(9) Each UBS QPAM must provide its certified Audit Report, by regular mail to: the Department's Office of Exemption Determinations (OED), 200 Constitution Avenue, NW, Suite 400, Washington DC 20210, or by private carrier to: 122 C Street, NW, Suite 400, Washington DC 20001-2109, no later than 45 days following its completion."

Section I(i)(9) of the final exemption states: "(9) Each UBS QPAM provides its certified Audit Report, by regular mail.... This delivery must take place no later than 30 days following completion of the Audit Report."

The Department is revising Section I(i)(9) for consistence with the proposed exemption, by replacing the phrase "30 days" with the phrase "45 days." As revised, Section I(i)(9) in relevant part now states, "This delivery must take place no later than 45 days following

completion of the Audit Report.”

**Section I(j)(7)**

Section I(j)(7) of the exemption states: “[b]y July 9, 2018, each UBS QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan.

For all other prospective Covered Plans, the UBS QPAM will agree to its obligations under this Section I(j) in an updated investment management agreement between the UBS QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016-17 that meets the terms of this condition.

Notwithstanding the above, a UBS QPAM will not violate the condition solely because a Plan or IRA refuses to sign an updated investment management agreement.”

The Department notes that the term “prospective Covered Plan,” as used in Section I(j)(7), means a Covered Plan that enters into a written asset or investment management agreement with a UBS QPAM on or after July 9, 2018.



**Section I(k)**

Section I(k) of the exemption states: "By March 10, 2018, each UBS QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Convictions (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that each Conviction separately results in a failure to meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a UBS QPAM acts as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. Any prospective client for which a UBS QPAM relies on PTE 84-14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption must receive the proposed and final exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the UBS QPAM. Disclosures may be delivered electronically."

The Department is revising Section I(k) by adding the phrase "that entered into a written asset or investment management agreement with a UBS QPAM on or before March 9, 2018" following the phrase "to each sponsor and beneficial owner of a Covered Plan" to clarify that Covered Plans that have entered into a written asset or investment management agreement with a UBS QPAM on or before March 9, 2018 must receive the disclosure material required under Section I(k) by March 10, 2018. As revised, Section I(k) in relevant part now states, "By March 10, 2018, each UBS QPAM will provide a notice of the exemption, along with a separate summary describing the facts that led to the Convictions (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that each Conviction separately results in a failure to meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered Plan that entered into a written asset or investment management agreement with a UBS QPAM on or before March 9, 2018, or the sponsor of an investment fund in any case where a UBS QPAM acts as a

sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests.”

The Department notes that the phrase, “Any prospective client for which a UBS QPAM relies on PTE 84-14 or has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption...” means: any Covered Plan that enters into a written asset or investment management agreement with a UBS QPAM on or after March 10, 2018.

**Section I(m)(1) and footnote 73**

Section I(m)(1) of the exemption states: “[b]y July 9, 2018, UBS designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an annual review for each period corresponding to the audit periods set forth in Section I(i)(1) (including the Initial Audit Period) (the Annual Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the

Compliance Officer, the following conditions must be met” (footnote omitted). Footnote 73 on page 61919 of the exemption provides that, “Note that such Annual Review must be completed with respect to the annual periods ending January 9, 2019; January 9, 2020; and January 9, 2021.”

For consistence with the Department’s intention, as expressed in the exemption’s comment section V on page 61909, that it would be efficient for the time frame for the Annual Review to coordinate with the time frame for the compliance review conducted by the UBS QPAMs for other regulators, the Department is revising the Initial Audit Period to reflect that such period begins on January 10, 2018 and ends on March 9, 2019. Additionally, the Department is revising footnote 73 on page 61919 of the exemption to be consistent with the revised dates of the audit periods and to remove the word “annual” before the word “periods.” As revised, footnote 73 now reads, “Note that such Annual Review must be completed with respect to the periods ending March 9, 2019; March 9, 2020; and March 9, 2021.”

**Section I(m)(1)(ii)**

Section I(m)(1)(ii) provides that, "[t]he Compliance Officer has a dual-reporting line within UBS's Compliance and Operational Risk Control (C&ORC) function: (A) a divisional reporting line to the Head of Compliance and Operational Risk Control, Asset Management, and (B) a regional reporting line to the Head of Americas Compliance and Operational Risk Control. The C&ORC function will be organizationally independent of UBS's business divisions – including Asset Management and the Investment Bank – and is led by the Global Head of C&ORC, who will report directly to UBS's Chief Risk Officer."

To accommodate UBS's organizational structure in a manner consistent with the requirements of this exemption, Section I(m)(1)(ii) of the exemption is revised to read, "The Compliance Officer has a reporting line within UBS's Compliance and Operational Risk Control (C&ORC) function to the Head of Compliance and Operational Risk Control, Asset Management. The C&ORC function is organizationally independent of UBS's business divisions – including Asset Management and the

Investment Bank – and is led by the Global Head of C&ORC, who will report directly to UBS’s Chief Risk Officer.”

**Section I(m)(2)(v)**

Section I(m)(2)(v) of the exemption states that, “[e]ach Annual Review, including the Compliance Officer’s written Annual Report, must be completed within at least three (3) months following the end of the period to which it relates.” Section I(m)(2)(v) of the exemption is revised by deleting the phrase “at least.” As revised, Section I(m)(2)(v) now reads, “Each Annual Review, including the Compliance Officer’s written Annual Report, must be completed within three (3) months following the end of the period to which it relates.”

**Comment Section Regarding Notice of Right to Obtain Copy of Policies – Section I(r)**

The comment section on page 61915 of the exemption discussing the right to obtain a copy of the Policies is hereby revised to be consistent with Section I(r) of the exemption, which provides that “[b]y July 09, 2018, each

UBS QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the UBS QPAM's written Policies developed in connection with this exemption...." Accordingly, the sentence beginning "[t]he Department also agrees with the Applicant..." in the first full paragraph in the second column on page 61915 is revised to read, "The Department also agrees with the Applicant that the timing requirement for disclosure should be revised and, accordingly, has modified the condition of Section I(r) to require notice regarding the information on the website within 6 months of the effective date of this exemption (by July 09, 2018), and thereafter to the extent certain material changes are made to the Policies."

**References to "UBS" and "UBS, AG"**

The term "UBS, AG" as it appears in Section II(g) is

revised to "UBS AG." The term "UBS, AG" is it appears elsewhere in the exemption is revised to mean "UBS."

**Definition of UBS QPAM - Section II(h)**

Section II(h) of the exemption states: "[t]he term 'UBS QPAM' means UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, UBS O'Connor LLC, and any future entity within the Asset Management or the Wealth Management Americas divisions of UBS, AG that qualifies as a 'qualified professional asset manager' (as defined in Section VI(a) of PTE 84-14) and that relies on the relief provided by PTE 84-14 or represents to ERISA-covered plans and IRAs that it qualifies as a QPAM and with respect to which UBS, AG is an 'affiliate' (as defined in Part VI(d) of PTE 84-14). The term 'UBS QPAM' excludes UBS, AG and UBS Securities Japan" (footnote omitted).

The Department is revising Section II(h) of the exemption by deleting the phrase "or represents to ERISA-covered plans and IRAs that it qualifies as a QPAM." As revised, Section II(h) now reads, "The term 'UBS QPAM'



means UBS Asset Management (Americas) Inc., UBS Realty Investors LLC, UBS Hedge Fund Solutions LLC, UBS O'Connor LLC, and any future entity within the Asset Management or the Wealth Management Americas divisions of UBS that qualifies as a 'qualified professional asset manager' (as defined in Section VI(a)**17** of PTE 84-14) and that relies on the relief provided by PTE 84-14 and with respect to which UBS is an 'affiliate' (as defined in Part VI(d) of PTE 84-14). The term 'UBS QPAM' excludes UBS and UBS Securities Japan."

FOR FURTHER INFORMATION CONTACT: Mr. Brian Mica of the Department, telephone (202) 693-8402. (This is not a toll-free number).

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**17** In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

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Lyssa E. Hall  
Director of Exemption  
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